

ELIZABETH MAPURISA
and
ENESIA GUTU
and
SIMBA MOYO
and
RAISHEN MOYO
versus
NEHANDA HOUSING COOPERATIVE
and
SUNGAMBERI HOUSING COOPERATIVE

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 13 March 2015

Urgent Chamber Application

S. Mpfu, for the applicants
C.W. Gumiro, for the 1st respondent
R.K.H Mapombere, for the 2^{ns} respondent

BERE J; In launching this urgent application the applicants have urged this court to grant them interim relief couched as follows:-

“INTERIM RELIEF GRANTED

1. 1st Respondent be and is hereby interdicted from selling stands to any person either natural or juristic.
2. 1st Respondent’s management shall not dispose of any asset belonging to 1st Respondent or purchased using 1st respondent members’ contributions.
3. 2nd Respondent shall not threaten nor interfere with administration of 1st Respondent’s activities”

This application is premised on the first applicant’s other application pending in this court filed under HC 9842/14 on 6 November 2014. I will refer to this particular application as the main application for ease of reference. The first applicant’s main application was filed in terms of s 85 (1) (c) of the Constitution of the Republic of Zimbabwe¹ and in that application the first applicant appears as the only applicant who on 9 September 2014 was

suspended by the first respondent.

In that main application the first applicant sought *inter alia* to challenge the general meeting of 27th September 2014 which appears to have ushered in the Management Committee whose coming into being she was not happy with. She also sought the disqualification of this Management Committee. There is no doubt that the applicant has problems with the Management Committee of the first respondent.

A date of hearing is yet to be provided in the main application.

The final order desired by the applicants in the instant matter is to bar first respondent from operating until such time the main matter is determined.

The urgent application filed by the applicants has been strenuously opposed by the two respondents on the basis that there is nothing that has been placed before this court to justify the urgency of this matter given that the main issue that triggered the applicant's concern were the election of office bearers for the first respondent on 27 September 2014.

The position of the first respondent and supported by the second respondent is that from September 2014 the applicants did nothing really to protect their interests and that they have had to wait until the filing of this urgent application on 10 March, 2015. There is no *bona fide* explanation as to why action was not taken immediately the first respondent's management was put in place to avoid the potential prejudice now being faced by the second respondent which has projected itself as an innocent party in its dealings with the first respondent.

The applicants have instead gauged the computation of their time to file this urgent application from the 8th and 9th of March 2015. The 8th of March 2015 is alleged to be the date when the applicants learnt of the transaction between the first respondent and the second respondent concerning the disposal of certain land in which the first applicant has an interest.

The significance of 9th of March 2015 is the date when the applicants were notified of their eviction from the cooperative's houses by the first respondent.

The view that this court takes is that the coming into office of the new office bearers of the first respondent on 27 September 2014 was with the full knowledge of the applicants and it ought to have dawned on the applicants that the new Management Committee was going to embark in running the affairs of the first respondent in a manner they considered to be in the best interest of the first respondent. The transactions involving the first respondent and the second respondent must clearly be looked at within this context. The casual approach

adopted by the applicants does not justify urgency in this case.

The eviction of the applicants by the first respondents initiated on the 9th of March 2015 cannot in my view be looked at as the most opportune time to bring the instant application to court on an urgent basis because if the applicants feel very strongly that they have a good defence to that eviction process they have all the time as prescribed by the court rules to deal with that process. That process can be dealt with independent of the order desired in the first applicant's main application pending in this court.

There is a plethora of authorities which condemn litigants who want to benefit from self-created urgency and this is one classic example of such a scenario. See *Kuvarega v Registrar-General and Anor*¹.

The other significant and disturbing feature of this case is that in HC 9842/14 the first applicant purports to be acting on behalf of other members of the first respondent yet there is nothing in her papers to demonstrate that she indeed has the mandate of those unidentified individuals. Not even an affidavit of collegiality has been filed by the first applicant.

One cannot by their mere say so pretend to be fighting for the cause of others without any tangible indication that indeed they have such a mandate. Section 85 (1) (c) of the constitution requires much more than a bare declaration that one is acting on behalf of other class of persons. There must be a way of identifying such other litigants otherwise it would set a very bad precedent for a litigant to be accepted to be representing others when in fact she is fighting for her own interests.

Finally, I am persuaded to accept without question the ratio expressed by my then sister Judge, Gowora in the case referred to me by first respondent's counsel, *Makamure v Deven Engineering (Pvt) Ltd*² that;

“Litigants must refrain from seeking relief in an urgent manner where such relief is dependant on the conclusion of an action launched”.

The rationale behind this is that such an approach forces the judge seized with the urgent application to start speculating on the possible outcome of the matter that may never be brought before him for determination, worse still for him to try and draw conclusions that may be in conflict with the eventual outcome of the main matter.

In any event in the main case that has been launched by the first applicant under HC 9842/14 the first applicant does not seek to have the decisions of the Management Committee whose legitimacy she attacks to be set aside.

Consequently, I am satisfied that the applicants have failed to fast track this matter

before the court on an urgent basis.

I decline to hear this matter on urgent basis.

The applicants are ordered to pay costs of this application for both the first and second respondents.

Munangati and Associates Incorporating Goneso and Associates, applicants' legal practitioners

Kachere and Guwuriro, 1st respondent's legal practitioners

Mapondera and Company, 2nd respondent's legal practitioners